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FILED
JUL 11 2003
DEPARTMENT OF REAL ESTATE

DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA

By 

* * * * *

In the Matter of the Application of)
MICHELLE MARIA PAULA SMITH,
Respondent.

No. H-29785 LA
L-2003010782

DECISION

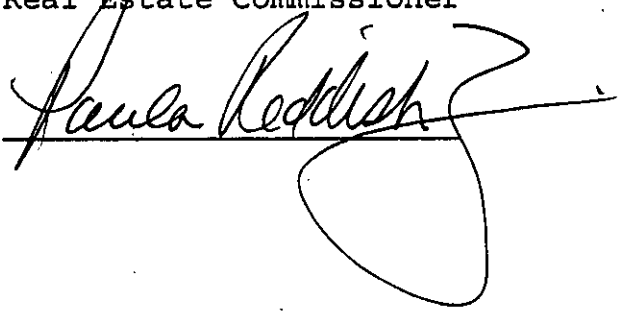
The Proposed Decision dated June 11, 2003 of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

The application for a real estate salesperson license is denied. There is no statutory restriction on when application may again be made for this license. If and when application is again made for this license, all competent evidence of rehabilitation presented by respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto for the information of respondent.

This Decision shall become effective at 12 o'clock noon on July 31, 2003

IT IS SO ORDERED July 9, 2003

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



**BEFORE THE
DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues
Against:

MICHELLE MARIA PAULA SMITH,

Respondent.

Case No. H-29785 LA

OAH No. L2003010782

PROPOSED DECISION

Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California, on May 14, 2003.

Mary E. Work, Real Estate Counsel, represented complainant.

Respondent appeared and represented herself.

Oral and documentary evidence was received and argument made. Complainant's motion to amend the First Amended Statement of Issues as follows was granted: at page 3, line 6, "Paragraphs III and IV" is replaced with "Paragraphs II and III." The record was thereafter closed and the matter submitted on May 14, 2003.

The below order DENYING respondent's application for a real estate salesperson license is based on the following Factual Findings and Legal Conclusions:

FACTUAL FINDINGS

1. Maria Suarez ("complainant"), a Deputy Real Estate Commissioner of the California Department of Real Estate ("DRE"), filed the First Amended Statement of Issues in her official capacity.
2. On August 28, 2001, respondent applied to the DRE for a real estate salesperson license. The application was denied because of the convictions described below and respondent's failure to fully disclose all in her application. Respondent appealed and requested the instant hearing.
3. On November 17, 1998, in the Municipal Court, County of Los Angeles, State of California, in Case No. 8SG03923, respondent, upon her plea of nolo contendere, was convicted of violating Penal Code Section 148.5(a) (Fraudulent Crime Report), a misdemeanor, involving moral turpitude, substantially related to the qualifications, functions or duties of a real estate licensee.

4. On April 5, 2000, in the Municipal Court, County of Los Angeles, State of California, in Case No. 0SE00586, respondent, upon her plea of nolo contendere, was convicted of violating Penal Code Section 484(a) (Theft of Property), a misdemeanor crime of moral turpitude substantially related to the qualifications, functions or duties of a real estate licensee.

5. Respondent's license application contained, in part, the following instructions for Questions 24-26 on the reverse side, to wit: "ALL CONVICTIONS MUST BE DISCLOSED WHETHER OR NOT THE PLEA OR VERDICT WAS SET ASIDE, THE CONVICTION WAS DISMISSED, OR EXPUNGED OR IF YOU HAVE BEEN PARDONED." Respondent revealed the convictions described above, but not the conviction described immediately below. Additionally, in response to Question 26 of the application, to wit: "ARE THERE ANY CRIMINAL CHARGES PENDING AGAINST YOU AT THIS TIME?", Respondent answered "No."

6. On July 10, 2001, in the Municipal Court, County of Los Angeles, State of California, in Case No. 1DW03471, respondent, upon her plea of nolo contendere, was convicted of violating Penal Code section 666 (Petty Theft with a Prior), a misdemeanor crime of moral turpitude substantially related to the qualification, functions or duties of a real estate licensee. On May 20, 2002, the conviction was dismissed pursuant to Penal Code Section 1385, after respondent completed a six-month theft program.

7. Respondent's failure to disclose the 2001 conviction for petty theft with a prior, in her application, was a misrepresentation and omission of a material fact.

8. In aggravation: respondent began the process of submitting her application before her third arrest and conviction there from; she is still on probation for the 2000 theft conviction; and she was on probation from her first conviction when she suffered the second arrest and conviction there from described above.

9. Respondent is a young woman in her early twenties who appeared remorseful for the mistakes she made when younger. She has since made some progress toward her rehabilitation. She currently attends college, plays on her school's women's basketball team, works part-time, and also takes care of her siblings when her parents are not around. She is still on probation from a prior conviction and has not met many of the hallmarks of rehabilitation. She is still in the process of maturing.

LEGAL CONCLUSIONS

1. Respondent's convictions involve moral turpitude and are substantially related to the qualifications, functions and duties of a real estate salesperson under California Code of Regulations, title 10, § 2911, subdivisions (a)(8) & (10), and therefore constitute cause for denial of her application for a real estate license under sections 475(a)(2), 480(a)(1), and 10177(b) of the California Business and Professions Code. Factual Findings 1-6.

2. Respondent's failure to disclose in her application the 2001 conviction for petty theft with a prior constitutes the attempted procurement of a real estate license by misrepresentation, or by making a material misstatement of fact, either of which is cause for denial of issuance of a license to an applicant under sections 475(a)(1), 480(c) and 10177(a) of the Business and Professions Code. Factual Findings 1-7.

3. Respondent did not demonstrate sufficient rehabilitation from her prior convictions to justify issuance of a restricted license.

The DRE established criteria for an applicant's rehabilitation from conviction of a crime, found at California Code of Regulations ("CCR"), title 10, § 2911, subdivisions (a)-(n). Respondent meets very little of this criteria: not less than two years have lapsed since her last conviction; her convictions are not expunged; she has not successfully completed probation; she did not establish a change in attitude since that existing at the time of her crimes, nor did she present any third party evidence of such. Her failure to disclose her last conviction on her application also indicates she does not completely understand the requirement of full candor for a licensee or that she has completely rehabilitated from her prior crimes. Respondent is making encouraging progress. She had the burden, however, to establish her full rehabilitation. That burden is heavier given she committed three crimes involving dishonesty and/or theft proximate in time to each other, she committed two while on probation from others, and she failed to disclose one on her license application. She failed to meet her burden. Factual Findings 1-9.

ORDER

The application of respondent MICHELLE MARIA PAULA SMITH for a real estate salesperson license is DENIED.

DATED: June 11, 2003

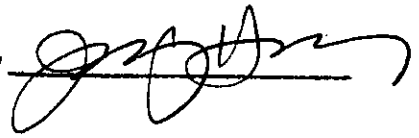


ERIC SAWYER,
Administrative Law Judge
Office of Administrative Hearings

SAULT
FLAG

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FILED
MAR 19 2003
DEPARTMENT OF REAL ESTATE

By 

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Application of)
MICHELLE MARIA PAULA SMITH,) NO. H-29785 LA
12)
13) FIRST AMENDED
Respondent.) STATEMENT OF ISSUES
14)

15
16 The Complainant, Maria Suarez, a Deputy Real Estate
17 Commissioner of the State of California, for First Amended
18 Statement of Issues against MICHELLE MARIA PAULA SMITH
19 (hereinafter "Respondent") is informed and alleges in her
20 official capacity as follows:

21 I

22 On or about August 28, 2001, Respondent applied to the
23 Department of Real Estate of the State of California for a real
24 estate salesperson license with the knowledge and understanding
25 that any license issued as a result would be subject to the
26 conditions of Section 10153.4 of the Business and Professions
27 Code.

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II

On or about November 17, 1998, in the Municipal Court of Southeast - Southgate Judicial District, County of Los Angeles, State of California, in Case No. 8SG03923, Respondent, upon her plea of nolo contendere, was convicted of violating Penal Code Section 148.5(a) (Misdemeanor - Report Crime Fraudulently), a misdemeanor crime of moral turpitude that is substantially related under Section 2910, Title 10, Chapter 6, California Code of Regulations to the qualifications, functions or duties of a real estate licensee.

III

On or about April 5, 2000, in the Municipal Court of Southeast - H.P. Judicial District, County of Los Angeles, State of California, in Case No. 0SE00586, Respondent, upon her plea of nolo contendere, was convicted of violating Penal Code Section 484(a) (Misdemeanor - Theft of Property), a misdemeanor crime of moral turpitude that is substantially related under Section 2910, Title 10, Chapter 6, California Code of Regulations to the qualifications, functions or duties of a real estate licensee.

IV

The crimes that Respondent has been convicted of constitute cause for denial of her application for a real estate license under Section 475(a)(2), 480(a)(1), and 10177(b) of the California Business and Professions Code.

V

The application, described above in Paragraph I,

1 contains, in part, the following instructions for Questions 24-
2 26 on the reverse side, to wit: "ALL CONVICTIONS MUST BE
3 DISCLOSED WHETHER OR NOT THE PLEA OR VERDICT WAS SET ASIDE, THE
4 CONVICTION WAS DISMISSED, OR EXPUNGED OR IF YOU HAVE BEEN
5 PARDONED." Respondent revealed the convictions described above
6 in Paragraphs III and IV, however not the conviction below in
7 Paragraph VI. Additionally, in response to Question 26 of said
8 application, to wit: "ARE THERE ANY CRIMINAL CHARGES PENDING
9 AGAINST YOU AT THIS TIME?" Respondent answered "No."

10 VI

11 On or about July 10, 2001, in the Municipal Court of
12 Downey Judicial District, County of Los Angeles, State of
13 California, in Case No. 1DW03471, Respondent, upon her plea of
14 nolo contendere, was convicted of violating Section 666 of the
15 Penal Code (Petty Theft with a Prior), a misdemeanor crime of
16 moral turpitude that is substantially related under Section
17 2910, Title 10, Chapter 6, California Code of Regulations to the
18 qualification, functions or duties of a real estate licensee.,
19 On or about May 20, 2002, the conviction was dismissed pursuant
20 to Penal Code Section 1385 after Respondent completed a six
21 month theft program.

22 VII

23 Respondent failure to disclose the matter set forth
24 above in Paragraphs V and VI, in said application, constitutes
25 the attempted procurement of a real estate license by
26 misrepresentation, fraud, deceit or by making a material
27 misstatement of fact which is cause for denial of issuance of a

1 license to an applicant under Sections 475(a)(1), 480(c) and
2 10177(a) of the California Business and Professions Code.

3 FACTS IN AGGRAVATION

4 Respondent remains on probation for the crime
5 described above in Paragraph III. In addition, Respondent was
6 on probation for the crime described above in Paragraph II when
7 she suffered the second conviction alleged within.

8 The Statement of Issues is brought under the
9 provisions of Section 10100, Division 4 of the Business and
10 Professions Code of the State of California and Sections 11500
11 through 11528 of the Government Code.

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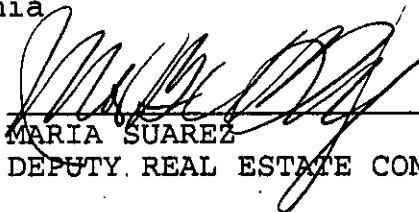
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WHEREFORE, the Complainant prays that the above-entitled matter be set for hearing and, upon proof of the charges contained herein, that the Commissioner refuse to authorize the issuance of, and deny the issuance of a real estate license to Respondent, MICHELLE MARIA PAULA SMITH, and for such other and further relief as may be proper in the premises.

Dated at Los Angeles, California
this 18th day of March, 2003.



MARIA SUAREZ
DEPUTY REAL ESTATE COMMISSIONER

cc: Michelle Maria Paula Smith
Wasilik Elias Klimenko
Maria Suarez
SACTO
LF/CW

SACTO

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

In the Matter of the Application of) Case No. H-29785 LA
)
MICHELLE MARIA PAULA SMITH,) OAH No. L-2003010782
)
 _____)
 Respondent(s)

FILED
 FEB 20 2003
 DEPARTMENT OF REAL ESTATE

NOTICE OF HEARING ON APPLICATION

By 

To the above-named Respondent(s):

You are hereby notified that a hearing will be held before the Department of Real Estate at the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, CA 90013-1105 on WEDNESDAY, MAY 14, 2003, at the hour of 9:00 A.M., or as soon thereafter as the matter can be heard, upon the Statement of Issues served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

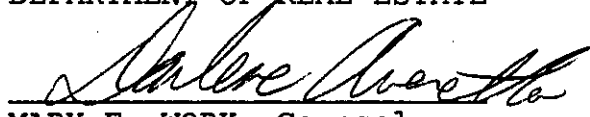
The burden of proof is upon you to establish that you are entitled to the license or other action sought. If you are not present nor represented at the hearing, the Department may act upon your application without taking evidence.

You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: February 20, 2003

By 
 MARY E. WORK, Counsel

cc: Michelle Maria Paula Smith
 Wasilik E. Klimenko
 Sacto.
 OAH

SAC/TC

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6
7 Telephone: (213) 576-6982
8 -Direct- (213) 576-6916
9

FILED
NOV 20 2002
DEPARTMENT OF REAL ESTATE
By *[Signature]*

8 BEFORE THE DEPARTMENT OF REAL ESTATE
9 STATE OF CALIFORNIA

10 * * *

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15 for such other and further relief as may be proper in the
16 premises.

17 Dated at Los Angeles, California

18 this 15th day of November, 2002.

19 
20 _____
21 MARIA SUAREZ
22 DEPUTY REAL ESTATE COMMISSIONER

23
24
25 cc: Michelle Maria Paula Smith
26 Wasilik Elias Klimenko
27 Maria Suarez
SACTO
LF / CW